

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,
W.A. DREW EDMONDSON, in his
capacity as ATTORNEY GENERAL
OF THE STATE OF OKLAHOMA,
et al.

Plaintiffs,

V.

TYSON FOODS, INC., et al.,

Defendants.

No. 05-CV-329-GKF-SAJ

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FEBRUARY 19, 2008

PRELIMINARY INJUNCTION HEARING

VOLUME I

BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

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UNITED STATES COURT REPORTER

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1 presenting information about their farms. And then there's --

2 THE COURT: I'm curious. Does that also apply to the
3 rates of application on a producer's own field?

4 MR. RYAN: It's my understanding it does, Your Honor.

5 THE COURT: You'd concede that the intensity, although
6 the practice has been going on for 50 years, the intensity has
7 increased over time; correct?

8 MR. RYAN: Are you talking about the amount of the
9 poultry waste that is being applied to the fields?

10 THE COURT: The number of chickens --

11 MR. RYAN: Sure.

12 THE COURT: -- the number of houses, the amount of
13 waste produced, et cetera?

14 MR. RYAN: Absolutely, Your Honor. Everything -- this
15 is the sixth fastest growing area of the nation. Everything in
16 this watershed area is growing. Humans -- the number of humans
17 have exploded, the number of cattle have increased, everything
18 has increased.

19 THE COURT: You understand, Mr. Ryan, of course, that
20 the State is asking for a complete injunction on application.

21 MR. RYAN: Yes.

22 THE COURT: But one of their arguments is that it may
23 not be waste to the extent that the fertilizer can be taken up
24 by the ground and the plants to which it's applied, and that it
25 may under the law be waste to the extent it's overapplied.

1 MR. RYAN: I understand that argument, yes.

2 THE COURT: Right. Of course, that presents serious
3 enforcement questions. How would -- if a court were to buy
4 into that argument that it is waste to the extent that it is no
5 longer fertilizer, that it is being disposed of at amounts
6 greater than agronomic need, would you not concede that it may
7 well be, under the law, waste?

8 MR. RYAN: No, Your Honor, for this reason, I mean,
9 there are --

10 THE COURT: Because, I mean, in a system where the
11 integrators own the chickens but the producers own their
12 excrement and it is of real economic necessity to get rid of
13 that excrement, it is necessarily economically advantageous to
14 apply, perhaps, in amounts greater than agronomic need;
15 correct?

16 MR. RYAN: Well, if I could speak for a moment, Your
17 Honor.

18 THE COURT: Sure.

19 MR. RYAN: I would say to you that poultry litter
20 has -- as indicated by the affidavit of Dr. Coale, an
21 agronomist from Maryland, it's in the mountain of material you
22 have. He tells you that there are 13 elements in poultry
23 litter all of which are essential for plant growth, for healthy
24 plant growth. One -- the state is focusing on but one of those
25 elements, phosphorus. The other 12 are, to my knowledge, not

1 being overapplied and are needed for plant growth.

2 THE COURT: Well, but here they're focusing on E. coli
3 and bacteria, not on phosphorus; correct?

4 MR. RYAN: I'm sorry, Your Honor?

5 THE COURT: In this proceeding are they not focusing
6 on bacteria as opposed to phosphorus?

7 MR. RYAN: Yes, Your Honor. No, that's absolutely
8 right, but we're talking about what the land needs and what's
9 being overapplied.

10 THE COURT: Right, right.

11 MR. RYAN: I think their argument only goes to the
12 phosphorus, to the one element of phosphorus. It does not
13 address the other twelve elements which I say are needed for
14 plant growth and are beneficial to the crops and plants and
15 pastures and forage. And I don't think there's any question
16 but that there has been an overapplication of litter on some or
17 many farms. That's not an issue in our book. I'm certainly
18 not arguing that in terms of phosphorus.

19 Your Honor, these are the defendants, there's 13 of
20 them. They're in seven, if you will, if you disregard
21 affiliated companies, there's seven companies. The plaintiffs
22 want to treat us as if we were one homogenous group. And if
23 they can show that the defendants, plural, apply bacteria
24 somehow to the waterways and that makes all the defendants
25 liable. These defendants are competitors of one another, Your